

Introduced by Senator Ashburn

February 27, 2009

An act to amend Sections 2401 and 2401.1 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 726, as amended, Ashburn. Hospitals: employment of physicians and surgeons.

Existing law, the Medical Practice Act, restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law establishes, until January 1, 2011, a pilot project to allow qualified district hospitals, as defined, to employ a physician and surgeon, if the hospital does not interfere with, control, or otherwise direct the professional judgment of the physician and surgeon. The pilot project authorizes the direct employment of a total of 20 physicians and surgeons by those hospitals, and specifies that each qualified district hospital may employ up to 2 physicians and surgeons, subject to certain requirements. *The pilot project requires that the term of a contract with a licensee not exceed 4 years.* Existing law requires the Medical Board of California to report to the Legislature not later than October 1, 2008, on the effectiveness of the pilot project.

This bill would revise the pilot project to authorize the direct employment by general acute care hospitals meeting specified requirements of an unlimited number of physicians and surgeons under the pilot project, and would authorize such a hospital to employ ~~up to~~ *5 more than 2* licensees at a time *in certain circumstances.* *The bill*

would require that the term of a contract with a licensee not exceed 10 years. The bill would extend the pilot project until January 1, ~~2016,~~ 2018. The bill would require the board to *provide a preliminary* report to the Legislature not later than ~~October~~ July 1, 2013, and a final report not later than July 1, 2016, ~~on the evaluation of~~ evaluating the effectiveness of the pilot project, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares that a
2 2001 University of California, San Francisco, study found that the
3 Inland Empires, Central Valley/Sierra Nevada, and South
4 Valley/Sierra Nevada regions have at least 30 percent fewer
5 physicians and surgeons than the Los Angeles and San Francisco
6 Bay area regions.

7 SEC. 2. Section 2401 of the Business and Professions Code is
8 amended to read:

9 2401. (a) Notwithstanding Section 2400, a clinic operated
10 primarily for the purpose of medical education by a public or
11 private nonprofit university medical school, which is approved by
12 the Division of Licensing or the Osteopathic Medical Board of
13 California, may charge for professional services rendered to
14 teaching patients by licensees who hold academic appointments
15 on the faculty of the university, if the charges are approved by the
16 physician and surgeon in whose name the charges are made.

17 (b) Notwithstanding Section 2400, a clinic operated under
18 subdivision (p) of Section 1206 of the Health and Safety Code
19 may employ licensees and charge for professional services rendered
20 by those licensees. However, the clinic shall not interfere with,
21 control, or otherwise direct the professional judgment of a
22 physician and surgeon in a manner prohibited by Section 2400 or
23 any other provision of law.

24 (c) Notwithstanding Section 2400, a narcotic treatment program
25 operated under Section 11876 of the Health and Safety Code and
26 regulated by the State Department of Alcohol and Drug Programs,
27 may employ licensees and charge for professional services rendered
28 by those licensees. However, the narcotic treatment program shall
29 not interfere with, control, or otherwise direct the professional

1 judgment of a physician and surgeon in a manner prohibited by
2 Section 2400 or any other provision of law.

3 (d) Notwithstanding Section 2400, a qualified hospital may
4 employ a licensee pursuant to Section 2401.1, and may charge for
5 professional services rendered by the licensee, if the physician and
6 surgeon in whose name the charges are made approves the charges.
7 However, the hospital shall not interfere with, control, or otherwise
8 direct the physician and surgeon's professional judgment in a
9 manner prohibited by Section 2400 or any other provision of law.

10 SEC. 3. Section 2401.1 of the Business and Professions Code
11 is amended to read:

12 2401.1. (a) The Legislature finds and declares as follows:

13 (1) Due to the large number of uninsured and underinsured
14 Californians, a number of California communities are having great
15 difficulty recruiting and retaining physicians and surgeons.

16 (2) In order to recruit physicians and surgeons to provide
17 medically necessary services in ~~rural and~~ medically underserved
18 communities, many hospitals have no viable alternative but to
19 directly employ physicians and surgeons in order to provide
20 economic security adequate for a physician and surgeon to relocate
21 and reside in their communities.

22 (3) The Legislature intends that a hospital meeting the conditions
23 set forth in this section be able to employ physicians and surgeons
24 directly, and to charge for their professional services.

25 (4) The Legislature reaffirms that Section 2400 provides an
26 increasingly important protection for patients and physicians and
27 surgeons from inappropriate intrusions into the practice of
28 medicine, and further intends that a hospital not interfere with,
29 control, or otherwise direct a physician and surgeon's professional
30 judgment.

31 (b) A pilot project to provide for the direct employment of
32 physicians and surgeons by qualified hospitals is hereby established
33 in order to improve the recruitment and retention of physicians
34 and surgeons in ~~rural and other~~ medically underserved areas.

35 (c) For purposes of this section, a qualified hospital means a
36 hospital that meets ~~both~~ *all* of the following requirements:

37 (1) Is a general acute care hospital, as defined in Section 1250
38 of the Health and Safety Code.

39 (2) Is located within a medically underserved population,
40 medically underserved area, or health professions shortage area,

1 so designated by the federal government pursuant to Section 254b,
2 254c-14, or 254e of Title 42 of the United States Code, or is a rural
3 hospital as defined in Section 124840 of the Health and Safety
4 Code.

5 ~~(d) In addition to the requirements of subdivision (c), and in~~
6 ~~addition to other applicable laws, a qualified hospital may directly~~
7 ~~employ a licensee pursuant to subdivision (b) if all of the following~~
8 ~~conditions are satisfied:~~

9 *(3) (A) The chief executive officer of the hospital has provided*
10 *certification to the board that it has been unsuccessful in recruiting*
11 *a core physician for at least 12 consecutive months during the*
12 *period beginning on July 1, 2008, and ending on July 1, 2009.*

13 *(B) For purposes of this paragraph, “core physician” means a*
14 *physician and surgeon specializing in family practice, internal*
15 *medicine, general surgery, orthopedic surgery, or obstetrics and*
16 *gynecology.*

17 ~~(1)~~

18 *(4) The medical staff and the elected trustees of the qualified*
19 *hospital concur by an affirmative vote of each body that the*
20 *physician and surgeon’s employment is in the best interest of the*
21 *communities served by the hospital.*

22 ~~(2) The licensee enters into or renews a written employment~~
23 ~~contract with the qualified hospital prior to December 31, 2011,~~
24 ~~for a term not in excess of four years. The contract~~

25 *(5) The hospital enters into or renews a written employment*
26 *contract with the physician and surgeon prior to December 31,*
27 *2017, for a term not in excess of 10 years. The contract shall*
28 *provide for mandatory dispute resolution under the auspices of the*
29 *board for disputes directly relating to the licensee’s clinical*
30 *practice.*

31 ~~(3) The total number of licensees employed by the qualified~~
32 ~~hospital does not exceed five at any time.~~

33 *(6) (A) Except as provided in subparagraph (B), the total*
34 *number of licensees employed by the hospital does not exceed two*
35 *at any time.*

36 *(B) The board shall authorize the hospital to hire additional*
37 *licensees if the medical staff and elected trustees concur by an*
38 *affirmative vote taken pursuant to paragraph (4).*

39 ~~(4) The qualified~~

1 (7) *The* hospital notifies the board in writing that the hospital
2 plans to enter into a written contract with the licensee, and the
3 board has confirmed that the licensee's employment is within the
4 maximum number permitted by this section. The board shall
5 provide written confirmation to the hospital within five working
6 days of receipt of the written notification to the board.

7 ~~(e)~~

8 ~~(d) The board shall report to the Legislature not later than~~
9 ~~October 1, 2013, on the evaluation of~~ *provide a preliminary report*
10 *to the Legislature not later than July 1, 2013, and a final report*
11 *not later than July 1, 2016, evaluating* the effectiveness of the pilot
12 project in improving access to health care in ~~rural and~~ medically
13 underserved areas and the project's impact on consumer protection
14 as it relates to intrusions into the practice of medicine.

15 ~~(f)~~

16 (e) Nothing in this section shall exempt the hospital from any
17 reporting requirements or affect the board's authority to take action
18 against a physician and surgeon's license.

19 ~~(g)~~

20 (f) This section shall remain in effect only until January 1, ~~2016~~
21 ~~2018~~, and as of that date is repealed, unless a later enacted statute
22 that is enacted before January 1, ~~2016~~ 2018, deletes or extends
23 that date.